

# Decision Notice

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**Decision 164/2018: Ms V and Glasgow City Council**

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**Rough Sleeping Task Force**

Reference No: 201801320

Decision Date: 22 October 2018



Scottish Information  
Commissioner

## Summary

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The Council was asked about its Rough Sleeping Task Force. The Council initially stated that the information was publicly available, but later said it did not hold any information.

During the investigation, the Council identified and disclosed information falling within the scope of the request.

The Commissioner found that the Council failed to comply with FOISA when responding to the request. As the Council has now disclosed the information and taken steps to avoid similar failings in future, the Commissioner does not require it to take any further action.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 17(1) (Notice that information is not held)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

## Background

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1. On 6 June 2018, Ms V made a request for information to Glasgow City Council (the Council). The information requested was:
  - (i) How many times the Rough Sleeping Task Force has met?
  - (ii) Minutes of the meetings of the Rough Sleeping Task Force.
  - (iii) What, if any, reports/recommendations the Rough Sleeping Task Force has made to the City Administration Committee.
2. The Council responded on 4 July 2018. It withheld the information under section 25(1) of FOISA (Information otherwise accessible), stating that the information she had requested could be obtained from a publicly available report and from other information available online. It provided her with the web links to the report and other information.
3. On 5 July 2018, Ms V wrote to the Council requesting a review of its decision on the basis that it had directed her to information regarding the Scottish Government's Task Force on Rough Sleeping, whereas she was seeking information regarding the Council's own Rough Sleeping Task Force.
4. The Council notified Ms V of the outcome of its review on 30 July 2018. It gave her notice, in terms of section 17(1) of FOISA, that it did not hold any information relating to a "Glasgow City Council Rough Sleeping Task Force" and stated that its Homelessness Unit was not aware of the existence of this Task Force. The Council explained that it had initially believed Ms V's request related to the Scottish Government's Task Force, and apologised for its failure to contact her for clarification.
5. On 3 August 2018, Ms V applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Ms V was dissatisfied with the outcome of the Council's review because the

Council had notified her that it did not hold any information falling within the scope of her request, but a senior councillor had subsequently made comments on social media indicating that the Rough Sleeping Task Force did exist.

## **Investigation**

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6. The application was accepted as valid. The Commissioner confirmed that Ms V made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
7. On 29 August 2018, the Council was notified in writing that Ms V had made a valid application and the case was allocated to an investigating officer.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Council was invited to comment on this application and answer specific questions including justifying its reliance on any provisions of FOISA it considered applicable to the information requested.

## **Commissioner's analysis and findings**

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9. In coming to a decision on this matter, the Commissioner considered all of the withheld information and the relevant submissions, or parts of submissions, made to him by both Ms V and the Council. He is satisfied that no matter of relevance has been overlooked.

### **Information held by the Council**

10. Section 1(1) of FOISA provides that a person who requests information from a Scottish public authority which holds it is entitled to be given that information by the authority. This is subject to qualifications which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. These qualifications do not apply in this case.
11. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). This is not necessarily to be equated with information an applicant believes the authority should hold. If no relevant information is held by the authority, section 17(1) of FOISA requires the authority to give the applicant notice to that effect.
12. The Commissioner notes the submissions provided by Ms V, in which she explains why the Council should hold the requested information. Ms V submitted that there was evidence that the Council did have a Rough Sleeping Task Force. An article in the Evening Times contained a statement from a Council spokesman which indicated the response Ms V had received was wrong, and a senior councillor had made comments on social media by which suggested that the Rough Sleeping Task Force did exist.
13. The Council acknowledged that it had given Ms V an inaccurate response to her information request. It explained to the Commissioner that the Social Work FOI Team initially misinterpreted her request as relating to a Scottish Government homelessness initiative and had applied the exemption contained in section 25(1) of FOISA, as the information was reasonably accessible without seeking it under FOISA. At the review stage, the Council consulted officers from its Homelessness Team who advised that they were not aware of a Rough Sleeping Task Force. The Council noted that it also carried out searches on Council committee papers, including the City Administration Committee, but no relevant information

was found. The Council then gave Ms V notice that it did not hold the information she had requested.

14. Following concerns raised by Ms V, the Council realised that it had not responded accurately to her information request. It discovered that the officers from the Homelessness Team were not aware of the existence of the Rough Sleeping Task Force, which is primarily a political initiative. The Council identified that there had been a lack of communication between the senior officers involved in the Rough Sleeping Task Force and the officers working within the Homelessness Team.
15. The Council's Chief Executive wrote to Ms V on 17 August 2018, after the review outcome had been issued, and apologised for the Council's inaccurate response. The Council provided Ms V with the minutes of two meetings of the Rough Sleeping Task Force, and notified her that the minutes of the 12 April 2018 meeting were still in draft form, but would be provided to her once they had been ratified. These minutes were provided to Ms V during the Commissioner's investigation.
16. The Council submitted that its Internal Audit department had carried out an investigation following its review response to Ms V. Council officers from the FOI team and Social Work FOI team were interviewed. The Internal Audit investigation concluded that there was no deliberate attempt by officers to misinterpret the FOI request or obstruct an accurate response. However, it found there had been opportunities to clarify the request and to be more rigorous in obtaining senior officer views on the accuracy of the review response. In particular, the proposed response could have been escalated to Social Work Leadership or Chief Executive Leadership, at which point the work that had been undertaken by the Rough Sleeping Task Force could have been included in the response.
17. The Council stated that it had since put an action plan into place to ensure that such errors do not happen again. This included actions such as reviewing the Council's FOI process to identify instances where input should be sought from senior officers, members of the service Leadership Team and/or the Council's Monitoring Officer. The Council contended that this would help to ensure that, in future, all relevant information is included, in particular information and context that may only be known by senior officers within the Council.
18. Given the submissions and explanations provided by the Council, the Commissioner is satisfied that the Council did hold information falling within the scope of Ms V's request for information and it failed to identify and provide that information in response to her request. In failing to do so, the Council failed to comply with section 1(1) of FOISA. In addition, the Commissioner finds that the Council wrongly notified Ms V, under section 17(1) of FOISA, that it did not hold the information she had requested.
19. The Commissioner acknowledges that the Council contacted Ms V on 17 August 2018, after it had issued the inaccurate review outcome, with an apology and the information falling within the scope of her request.
20. The Commissioner is satisfied that the Council has thoroughly investigated the reasons behind its inaccurate response and has taken reasonable steps to prevent a recurrence of the error. Consequently, the Commissioner does not require the Council to take any actions in response to the failures identified in relation to Ms V's application for a decision.

## Decision

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The Commissioner finds that Glasgow City Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to Ms V's information request.

The Council failed to identify information covered by Ms V's request and wrongly gave notice under section 17(1) of FOISA that it did not hold any information. In doing so, it failed to comply with section 1(1) of FOISA.

Given that the Council has now disclosed all of the information to Ms V and has investigated its handling of her request, the Commissioner does not require the Council to take any action in response to these failures.

## Appeal

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Should either Ms V or the Council wish to appeal against this decision, they have the right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision.

**Margaret Keyse**  
**Head of Enforcement**

**22 October 2018**

### Freedom of Information (Scotland) Act 2002

#### 1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

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- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.

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#### 17 Notice that information is not held

- (1) Where-

- (a) a Scottish public authority receives a request which would require it either-

- (i) to comply with section 1(1); or  
(ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),

if it held the information to which the request relates; but

- (b) the authority does not hold that information,

it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.

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